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On page 18, line 10, delete the word "of" and insert in lieu thereof the word "or".

Mr. HRUSKA. Mr. President, the purpose of this amendment is to correct a typographical error. The word "of" should be the word "or." I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nebraska.

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPEAL OF SECTIONS 4 AND 5 OF VOTING RIGHTS LAW

Mr. ALLEN. Mr. President, for reasons briefly summarized below, I offer a bill to repeal sections 4 and 5 of the 1965 Voting Rights Act as amended and extended in 1970.

It will be recalled that section 4 establishes voter registration and participation standards by which States are identified and burdened with a legal presumption of unconstitutional discrimination in the administration of their voting laws.

On the basis of this presumption, section 5 establishes principles which have come to be known as the conquered province theory of the powers of Congress. Under this theory, Congress asserts a power to deprive States of essential elements of their respective sovereignties.

It can be demonstrated that these sections either amend, modify, or circumvent nine separate provisions of the U.S. Constitution.

More specifically, section 5 asserts a power in Congress to categorize State legislation by subject matter for the purpose of requiring prior approval by agencies of Federal Government as a necessary condition of the validity of such State laws. Such a power in Congress is inconsistent with a Republican form of Government guaranteed to the States by article IV, section 4, of the Constitution.

Section 5 asserts a power in Congress to delegate a judicial function and judicial powers to the executive branch of Federal Government to pass on the validity of States statutes and to deny such laws full force and effect of law pending approval or rejection by an agency of the executive branch. Such power in Congress contravenes the doctrine of separation of powers and violates the intention of article III of the Constitution which vests original jurisdiction of cases in which States are parties in the Supreme Court.

The prior approval provision in section 5 deprives States of their unfettered Constitutional prerogative to choose the manner by which they will appoint Presidential electors by subjecting such choice

to prior approval of agencies of Federal Government, contrary to the language, purpose, and intent of article III, section I, of the Constitution.

The provisions of sections 4 and 5 clearly constitute a "bill of attainder" and, as such, violate the prohibition on the passage of such bills as set out in article I, section 9, of the Constitution.

Section 4 abrogates the provisions of article I of the U.S. Constitution which adopts and makes a part of the U.S. Constitution the qualifications for voting for Members of Congress as are established by the States.

The liberty of individual citizens to pursue careers in public service without the onus of a prior determination by Congress of the moral unfitness of such citizens to serve is protected by due process limitations on the power of Congress in the fifth amendment. Sections 4 and 5 offend in this regard.

Canons of fairness, decency, reasonableness, and respect for law and traditions of our Nation are grossly violated by the criteria adopted by Congress to isolate and identify certain State legislators as a class and publicly condemn the class as unworthy of the trust to enact valid State legislation.

In other words, the Voting Rights Act, under the formula set in this act, provided for the use of a formula which made seven Southern States in violation of the Voting Rights Act automatically. Way back in 1964, they did not have half of their qualified voters voting in the Presidential election. As to those States tied with the triggering of this formula as provided in section 4, they were automatically held to be guilty of discrimination in the matter of their voting rights laws and the conduct of their election, enabling the Federal Government to send vote registrars, election watchers, poll watchers, into those States, because under this statute these seven Southern States are held to be guilty of discrimination just because back in 1964, 50 percent of the persons of voting age did not vote in that election and in addition, they had literacy tests; that combination.

But it was by using that combination that the seven Southern States were held to be guilty of discrimination.

Section 5 then provides that as to these States they cannot pass a law dealing with any far-fetched phase of voting rights or elections without first getting approval of the Attorney General of the United States to give efficacy to the statute.

So, Mr. President, in the seven Southern States, of which Alabama is one, if a law is passed having to do with elections in any form, having to do with the time of election, the manner of election, whether offices shall be voted on county-wide, statewide, or any difference in the manner of choosing a public official, if the city wants to annex territory, if there is a reduction in the board of revenue from five men to three men, any change that conceivably could have any effect on voting rights or that would have effect on elections, it has to be approved by the Attorney General of the United States before our local laws can have any effect.

So we have one rule applicable to seven Southern States and the rest of the country is not automatically held to be guilty of discrimination.

This bill repealing sections 4 and 5 puts all States of the Union on the same basis. If any State, any local government, is found to be guilty of discrimination in the matter of voting rights or elections, then the Federal Government can come in, make out a case of discrimination, and the penalties would be applied.

So if there is discrimination, then the penalty could be applied. But under the present law, the seven Southern States are held to be in discrimination, even though any discrimination which may have existed way back in 1964 has been eliminated, if any discrimination existed back at that time.

All we are asking under this bill is that all States of the Union be put on the same basis.

When this Voting Rights Act came before the Supreme Court in 1965, Mr. Justice Black, in a dissenting opinion, held that that portion of the Voting Rights Act requiring State and local governments to get approval of the Attorney General before those laws could have any effect, was treating the seven Southern States as conquered provinces. He held that that section of the bill was unconstitutional. Of course, I agree with that position.

Even if it were held to be unconstitutional back then under changing circumstances, changing conditions, it could not be held to be constitutional today if the matter should be tested in court.

The denial by Congress of the traditional, reasonable, and necessary presumption of the validity of the acts of State legislatures is an unconstitutional encroachment on powers reserved in the States and in the people by the 10th amendment.

All we are trying to do is apply the same rules in Alabama and the South as are applied in other sections of the country. I do not feel that is too unreasonable a request to make. I do not see why the Federal law should be that seven Southern States are guilty of discrimination in their State legislatures; they are guilty of discrimination in the operation of their board of registrars; they are guilty of discrimination in the operation of their elections. That is what the law says at present. That has been the law for almost 10 years.

The time has come to change that law, because any person 18 years of age who presents himself to a board of registrars anywhere I know of in Alabama and throughout the entire South is able to register on proof of residence.

Alabama has one of the highest percentages of persons of voting age who are registered to vote of any State in the Union. And yet the Federal law says that they are discriminating against would-be voters, and they are discriminating against voters in the conduct of elections in their State legislatures, when they enact statutes regarding elections, registration, or the change in the form of local governments.

In the city of Montgomery, Ala., after a law was passed with respect to the form of government and calling for an

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than six months after the date on which this Act becomes effective, promulgate regulations to implement the standards, safeguards, and access requirements of this title and such other regulations as may be necessary to implement the requirements of this Act.

TITLE III—MISCELLANEOUS

DEFINITIONS

SEC. 301. As used in this Act—

(1) the term "Commission" means the Privacy Protection Commission;

(2) the term "personal information" means any information that identifies or describes any characteristic of an individual including, but not limited to, his education, financial transactions, medical history, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution;

(3) the term "individual" means a citizen of the United States or an alien lawfully admitted through permanent residence;

(4) the term "information system" means the total components and operations, whether automated or manual, by which personal information, including name or identifier, is collected, stored, processed, handled, or disseminated by an agency;

(5) the term "file" means a record or series of records containing personal information about individuals which may be maintained within an information system;

(6) the term "data bank" means a file or series of files pertaining to individuals;

(7) the term "Federal agency" means any department, agency, instrumentality, or establishment in the executive branch of the Government of the United States and includes any officer or employee thereof;

(8) the term "investigative information" means information associated with an identifiable individual compiled by—

(A) an agency in the course of conducting a criminal investigation of a specific criminal act where such investigation is pursuant to a statutory function of the agency. Such information may pertain to that criminal act and be derived from reports of informants and investigators, or from any type of surveillance. The term does not include criminal history information nor does it include initial reports filed by a law enforcement agency describing a specific incident, indexed chronologically and expressly required by State or Federal statute to be made public; or

(B) by an agency with regulatory jurisdiction which is not a law enforcement agency in the course of conducting an investigation of specific activity which falls within the agency's regulatory jurisdiction. For the purposes of this paragraph, an "agency with regulatory jurisdiction" is an agency which is empowered to enforce any Federal statute or regulation, the violation of which subjects the violator to criminal or civil penalties;

(9) the term "law enforcement intelligence information" means information associated with an identifiable individual compiled by a law enforcement agency in the course of conducting an investigation of an individual in anticipation that he may commit a specific criminal act, including information derived from reports of informants, investigators, or from any type of surveillance. The term does not include criminal history information nor does it include initial reports filed by a law enforcement agency describing a specific incident, indexed chronologically by incident and expressly required by State or Federal statute to be made public;

(10) the term "criminal history information" means information on an individual consisting of notations of arrests, detentions,

indictments, informations, or other formal criminal charges and any disposition arising from those arrests, detentions, indictments, informations, or charges. The term shall not include an original book of entry or police blotter maintained by a law enforcement agency at the place of an original arrest or place of detention, indexed chronologically and required to be made public, nor shall it include court records of public criminal proceedings indexed chronologically; and

(11) the term "law enforcement agency" means an agency whose employees or agents are empowered by State or Federal law to make arrests for violations of State or Federal law.

CRIMINAL PENALTY

SEC. 302. (a) Any officer or employee of any Federal agency who willfully keeps an information system without meeting the notice requirements of this Act set forth in section 201(c) shall be fined not more than \$2,000 in each instance or imprisoned not more than two years, or both.

(b) Whoever, being an officer or employee of the Commission, shall disseminate any personal information about any individual obtained in the course of such officer or employee's duties in any manner or for any purpose not specifically authorized by law shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

CIVIL REMEDIES

SEC. 303. (a) Any individual who is denied access to information required to be disclosed under the provisions of this Act may bring a civil action in the appropriate district court of the United States for damages or other appropriate relief against the Federal agency which denied access to such information.

(b) The Attorney General of the United States, or any aggrieved person, may bring an action in the appropriate United States district court against any person who is engaged or is about to engage in any acts or practices in violation of the provisions of this Act, to enjoin such acts or practices.

(c) The United States shall be liable for the actions or omissions of any officer or employee of the Government who violates the provisions of this Act, or any rule, regulation, or order issued thereunder in the same manner and to the same extent as a private individual under like circumstances to any person aggrieved thereby in an amount equal to the sum of—

(1) any actual damages sustained by an individual;

(2) to punitive damages where appropriate; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(d) The United States consents to be sued under this section without limitation on the amount in controversy. A civil action against the United States under subsection (c) of this section shall be the exclusive remedy for the wrongful action or omission of any officer or employee.

JURISDICTION OF DISTRICT COURTS

SEC. 304. (a) The district courts of the United States have jurisdiction to hear and determine civil actions brought under section 303 of this Act and may examine the information in camera to determine whether such information or any part thereof may be withheld under any of the exemptions in section 203 of this Act. The burden is on the Federal agency to sustain such action.

(b) In any action to obtain judicial review of a decision to exempt any personal information from any provision of this Act, the court may examine such information in camera to determine whether such information or any part thereof is properly classified with respect to national defense, foreign policy or law enforcement intelligence information or investigative information and

may be exempted from any provision of this Act. The burden is on the Federal agency to sustain any claim that such information may be so exempted.

EFFECTIVE DATE

SEC. 305. This Act shall become effective one year after the date of enactment except that the provisions of title I of this Act shall become effective on the date of enactment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 306. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

MORATORIUM ON USE OF SOCIAL SECURITY NUMBERS

SEC. 307. (a) It shall be unlawful for—

(1) any Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number, or

(2) any person to discriminate against any individual in the course of any business or commercial transaction or activity because of such individual's refusal to disclose his social security account number.

(b) The provisions of subsection (a) shall not apply with respect to—

(1) any disclosure which is required by Federal law, or

(2) any information system in existence and operating before January 1, 1975.

(c) Any Federal, State, or local government agency which requests an individual to disclose his social security account number, and any person who requests, in the course of any business or commercial transaction or activity, an individual to disclose his social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses will be made of it, and what rules of confidentiality will govern it.

The title was amended so as to read: "A bill to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes."

RULES OF EVIDENCE FOR CERTAIN COURTS AND PROCEEDINGS

The Senate continued with the consideration of the bill (H.R. 5463) to establish rules of evidence for certain courts and proceedings.

Mr. HRUSKA. Mr. President, I gave my opening remarks on this bill yesterday and at this time would only like to reiterate that I believe that H.R. 5463 constitutes milestone legislation. This bill is the culmination of many years of hard and thought-provoking work by many different people. The enactment of this bill will improve the administration of justice by giving us rules of evidence that are uniform, coherent, and readily accessible.

I should also point out that the President in his message to Congress of November 18 indicated his support for the prompt enactment of the subject bill. It is my hope that we can promptly enact H.R. 5463.

Mr. President, I send to the desk a technical amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

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ships in matters involving the collection, processing, sharing, exchange, and dissemination of personal information.

(2) The Federal agency shall not proceed to implement such proposal for a period of sixty days from date of receipt of notice from the Commission that the proposal does not comply with the standards established under or pursuant to this Act.

(g) Each Federal agency covered by this Act which maintains an information system or file shall make reasonable efforts to serve advance notice on an individual before any personal information on such individual is made available to any person under compulsory legal process.

(h) No person may condition the granting or withholding of any right, privilege, or benefit, or make as a condition of employment the securing by any individual of any information which such individual may obtain through the exercise of any right secured under the provisions of this section.

DISCLOSURE OF INFORMATION

SEC. 202. (a) No Federal agency shall disseminate personal information unless—

(1) it has made written request to the individual who is the subject of the information and obtained his written consent;

(2) the recipient of the personal information has adopted rules in conformity with this Act for maintaining the security of its information system and files and the confidentiality of personal information contained therein; and

(3) the information is to be used only for the purposes set forth by the sender pursuant to the requirements for notice under this Act.

(b) Section 202(a) (1) shall not apply when disclosure would be—

(1) to those officers and employees of that agency who have a need for such information in ordinary course of the performance of their duties;

(2) to the Bureau of the Census for purposes of planning or carrying out a census or survey pursuant to the provisions of title 13, United States Code: *Provided*, That such personal information is transferred or disseminated in a form not individually identifiable.

(3) where the agency determines that the recipient of such information has provided advance adequate written assurance that the information will be used solely as a statistical reporting or research record, and is to be transferred in a form that is not individually identifiable; or

(4) pursuant to a showing of compelling circumstances affecting health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(c) Section 201(b) (4) and paragraphs (1), (2), and (3) of subsection (a) of this section shall not apply when disclosure would be to the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office. Nothing in this Act shall impair access by the Comptroller General, or any of his authorized representatives, to records maintained by an agency, including records of personal information, in the course of performance of such duties.

(d) (1) Nothing in this section shall be construed to limit the efforts of the Government pursuant to the provision of chapter 35, title 44 of the United States Code (commonly known as the Federal Reports Act) or any other statute, to reduce the burden on citizens of collecting information by means of combining or eliminating unnecessary reports, questionnaires, or requests for information.

(2) Nothing in this section shall be construed to affect restrictions on the exchange of information between agencies as required by chapter 35, title 44 of the United States

Code (commonly known as the Federal Reports Act).

(e) Subsection (a) (1) of this section shall not apply when disclosures would be to another agency or to an instrumentality of any governmental jurisdiction for a law enforcement activity if such activity is authorized by statute and if the head of such agency or instrumentality has made a written request to or has an agreement with the agency which maintains the system or file specifying the particular portion of the information desired and the law enforcement activity for which the information is sought.

EXEMPTIONS

SEC. 203. (a) The provisions of section 201 (c) (3) (E), (d), and section 202, shall not apply to any personal information contained in any information system or file if the head of the Federal agency determines, in accordance with the provisions of this section, that the application of the provisions of any of such sections would seriously damage national defense or foreign policy or where the application of any of such provisions would seriously damage or impede the purpose for which the information is maintained.

(b) The provisions of section 201(d) and section 202 shall not apply to law enforcement intelligence information or investigative information if the head of the Federal agency determines, in accordance with the provisions of any of such sections would seriously damage or impede the purpose for which the information is maintained: *Provided*, That investigatory records shall be exempted only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose confidential investigative techniques and procedures which are not otherwise generally known outside the agency, or (E) endangers the life or physical safety of law enforcement personnel: *Provided*, That investigative information may not be exempted under this section where such information has been maintained for a period longer than is necessary to commence criminal prosecution. Nothing in this Act shall prohibit the disclosure of such investigative information to a party in litigation where required by statute or court rule.

(c) (1) A determination to exempt any such system, file, or information may be made by the head of any such agency in accordance with the requirements of notice, publication, and hearing contained in sections 553 (b), (c), and (e), 556, and 557 of title 5, United States Code. In giving notice of an intent to exempt any such system, file, or information, the head of such agency shall specify the nature and purpose of the system, file, or information to be exempted.

(2) Whenever any Federal agency undertakes to exempt any information system, file, or information from the provisions of this Act, the head of such Federal agency shall promptly notify the Commission of its intent and afford the Commission opportunity to comment.

(3) The exception contained in section 553 (d) of title 5, United States Code (allowing less than thirty days' notice), shall not apply in any determination made or any proceeding conducted under this section.

ARCHIVAL RECORDS

SEC. 204. (a) Federal agency records which are accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of

title 44, United States Code, shall, for the purposes of this section, be considered to be maintained by the agency which deposited the records and shall be subject to the provisions of this Act. The Administrator of General Services shall not disclose such records, or any information therein, except to the agency which maintains the records or pursuant to rules established by that agency.

(b) Federal agency records pertaining to identifiable individuals which were transferred to the National Archives of the United States as records which have sufficient historical or other value to warrant their continued preservation by the United States Government shall for the purposes of this Act, be considered to be maintained by the National Archives and shall not be subject to the provisions of this Act except section 201(b) (5) and (6).

(c) The National Archives shall, on the date on which this Act becomes effective and annually thereafter, notify the Commission and give public notice of the existence and character of the information systems and files which it maintains, and cause such notice to be published in the Federal Register. Such notice shall include at least the information specified under sections 201 (c) (3) (A), (B), (D), (E), (F), (G), (I), and (J).

EXCEPTIONS

SEC. 205. (a) No officer or employee of the executive branch of the Government shall rely on any exemption in subchapter II of chapter 5 of title 5 of the United States Code (commonly known as the Freedom of Information Act) to withhold information relating to an individual otherwise accessible to an individual under this Act.

(b) Nothing in this Act shall be construed to permit the withholding of any personal information which is otherwise required to be disclosed by law or any regulation thereunder.

(c) The provisions of section 201(d) (1) of this Act shall not apply to records collected or furnished and used by the Bureau of the Census solely for statistical purposes or as authorized by section 8 of title 13 of the United States Code: *Provided*, That such personal information is transferred or disseminated in a form not individually identifiable.

(d) The provisions of this Act shall not require the disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service if the disclosure of such material would compromise the objectivity or fairness of the testing or examination process.

(e) The provisions of this Act, with the exception of sections 201(a) (2), 201(b) (2), (3), (4), (5), (6) and (7), 201(c) (2), 201 (c) (3) (A), (B), (D), and (F), and 202(a) (2) and (3) shall not apply to foreign intelligence information systems or to systems of personal information involving intelligence sources and methods designed for protection from unauthorized disclosure pursuant to 50 U.S.C.A. 403.

MAILING LISTS

SEC. 206. (a) An individual's name and address may not be sold or rented by a Federal agency unless such action is specifically authorized by law. This provision shall not be construed to require the confidentiality of names and addresses otherwise permitted to be made public.

(b) Upon written request of any individual, any person engaged in interstate commerce who maintains a mailing list shall remove the individual's name and address from such list.

REGULATIONS

SEC. 207. Each Federal agency subject to the provisions of this Act shall, not later

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address of the person or other agency to whom disclosure was made or access was granted, except as provided by section 202(b) of this Act;

(5) establish rules of conduct and notify and instruct each person involved in the design, development, operation, or maintenance of the system or file, or the collection, use, maintenance, or dissemination of information about an individual, of the requirements of this Act, including any rules and procedures adopted pursuant to this Act and the penalties for noncompliance;

(6) establish appropriate administrative, technical and physical safeguards to insure the security of the information system and confidentiality of personal information and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom personal information is maintained; and

(7) establish no program for the purpose of collecting or maintaining information describing how individuals exercise rights guaranteed by the first amendment unless the head of the agency specifically determines that such information is relevant and necessary to carry out a statutory purpose of the agency.

(c) Any Federal agency that maintains an information system or file shall—

(1) make available for distribution upon the request of any person a statement of the existence and character of each such system or file;

(2) on the date on which this Act becomes effective and annually thereafter, notify the Commission and give public notice of the existence and character of each existing system or file simultaneously, and cause such notice to be published in the Federal Register; and

(3) include in such notices at least the following information:

(A) name and location of the system or file;

(B) nature and purposes of the system or file;

(C) categories of individuals on whom personal information is maintained and categories of personal information generally maintained in the system or file, including the nature of the information and the approximate number of individuals on whom information is maintained;

(D) the confidentiality requirements and the extent to which access controls apply to such information;

(E) categories of sources of such personal information;

(F) the Federal agency's policies and practices regarding implementation of sections 201 and 202 of this Act, information storage, duration of retention of information, and elimination of such information from the system or file;

(G) uses made by the agency of the personal information contained in the system or file;

(H) identity of other agencies and categories of persons to whom disclosures of personal information are made, or to whom access to the system or file may be granted, together with the purposes therefor and the administrative constraints, if any, on such disclosures and access, including any such constraints on redisclosure;

(I) procedures whereby an individual can (i) be informed if the system or file contains personal information pertaining to himself or herself, (ii) gain access to such information, and (iii) contest the accuracy, completeness, timeliness, relevance, and necessity for retention of the personal information; and

(J) name, title, official address, and telephone number of the officer immediately responsible for the system or file.

(d) (1) Each Federal agency that maintains an information system or file shall assure to an individual upon request the following rights:

(A) to be informed of the existence of any personal information pertaining to that individual;

(B) to have full access to and right to inspect the personal information in a form comprehensible to the individual;

(C) to know the names of all recipients of information about such individual including the recipient organization and its relationship to the system or file, and the purpose and date when distributed, unless such information is not required to be maintained pursuant to this Act;

(D) to know the sources of personal information (i) unless the confidentiality of any such source is required by statute, then the right to know the nature of such source; or (ii) unless investigative material used to determine the suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, is compiled by a Federal agency in pursuit of an authorized investigative responsibility, and in the course of compiling such materials, information prejudicial to the subject of the investigation is revealed through a source who furnishes such information to the Government under the express provision that the identity of the source will be held in confidence, and where the disclosure of such information would identify and be prejudicial to the rights of the confidential source, then the right to know the nature of such information and to examine that information if it is found to be material or relevant to an administrative or judicial proceeding by a Federal judge or Federal administrative officer; *Provided*, That investigative material shall not be made available to promotion boards which are empowered to promote or advance individuals in Federal employment, except when the appointment would be from a non-critical to a critical security position;

(E) to be accompanied by a person chosen by the individual inspecting the information, except that an agency or other person may require the individual to furnish a written statement authorizing discussion of that individual's file in the person's presence;

(F) to receive such required disclosures and at reasonable standard charges for document duplication, in person or by mail, if upon written request, with proper identification; and

(G) to be completely informed about the uses and disclosures made of any such information contained in any such system or file except those uses and disclosures made pursuant to law or regulation permitting public inspection or copying.

(2) Upon receiving notice that an individual wishes to challenge, correct, or explain any personal information about him in a system or file, such Federal agency shall comply promptly with the following minimum requirements:

(A) investigate and record the current status of the personal information;

(B) correct or eliminate any information that is found to be incomplete, inaccurate, not relevant to a statutory purpose of the agency, not timely or necessary to be retained, or which can no longer be verified;

(C) accept and include in the record of such information, if the investigation does not resolve the dispute, any statement of reasonable length provided by the individual setting forth his position on the disputed information;

(D) in any subsequent dissemination or use of the disputed information, clearly report the challenge and supply any supplemental statement filed by the individual;

(E) at the request of such individual, fol-

lowing any correction or elimination of challenged information, inform past recipients of its elimination or correction; and

(F) not later than sixty days after receipt of notice from an individual making a request concerning personal information, make a determination with respect to such request and notify the individual of the determination and of the individual's right to a hearing before an official of the agency which shall if requested by the individual, be conducted as follows:

(i) such hearing shall be conducted in an expeditious manner to resolve the dispute promptly and shall be held within thirty days of the request and, unless the individual requests a formal hearing, shall be conducted on an informal basis, except that the individual may appear with counsel, present evidence, and examine and cross-examine witnesses;

(ii) any record found after such a hearing to be incomplete, inaccurate, not relevant, not timely nor necessary to be retained, or which can no longer be verified, shall within thirty days of the date of such findings be appropriately modified or purged; and

(iii) the action or inaction of any agency on a request to review and challenge personal data in its possession as provided by this section shall be reviewable de novo by the appropriate United States district court.

An agency may, for good cause, extend the time for making a determination under this subparagraph. The individual affected by such an extension shall be given notice of the extension and the reason therefor.

(e) When a Federal agency provides by a contract, grant, or agreement for, and the specific creation or substantial alteration, or the operation by or on behalf of the agency of an information system or file and the primary purpose of the grant, contract, or agreement is the creation, substantial alteration, or the operation by or on behalf of the agency of such an information system or file, the agency shall, consistent with its authority, cause the requirements of subsections (a), (b), (c), and (d) to be applied to such system or file. In cases when contractors and grantees or parties to an agreement are public agencies of States or the District of Columbia or public agencies of political subdivisions of States, the requirements of subsections (a), (b), (c), and (d) shall be agency determines that the State or the District of Columbia or public agencies of political subdivisions of the State have adopted legislation or regulations which impose similar requirements.

(f) (1) Any Federal agency maintaining or proposing to establish a personal information system or file shall prepare and submit a report to the Commission, the General Services Administration, and to the Congress on proposed data banks and information systems or files, the proposed significant expansion of existing data banks and information systems or files, integration of files, programs for records linkage within or among agencies, or centralization of resources and facilities for data processing, which report shall include—

(A) the effects of such proposals on the rights, benefits, and privileges of the individuals on whom personal information is maintained;

(B) a statement of the software and hardware features which would be required in protect security of the system or file and confidentiality of information;

(C) the steps taken by the agency to acquire such features in their systems, including description of consultations with representatives of the National Bureau of Standards; and

(D) a description of changes in existing interagency or intergovernmental relation-

ments as they may require in the preparation and implementation of such legislation.

CONFIDENTIALITY OF INFORMATION

SEC. 104. (a) Each department, agency, and instrumentality of the executive branch of the Government, including each independent agency, shall furnish to the Commission, upon request made by the Chairman, such data, reports, and other information as the Commission deems necessary to carry out its functions under this Act.

(b) In carrying out its functions and exercising its powers under this Act, the Commission may accept from any Federal agency or other person any identifiable personal data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall provide appropriate safeguards to insure that the confidentiality of such information is maintained and that upon completion of the purpose for which such information is required it is destroyed or returned to the agency or person from which it is obtained, as appropriate.

POWERS OF THE COMMISSION

SEC. 105. (a) (1) The Commission may, in carrying out its functions under this Act, conduct such inspections, sit and act at such times and places, hold hearings, take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpoena shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpoenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) In case of disobedience to a subpoena issued under paragraph (1) of this subsection, the Commission may invoke the aid of any district court of the United States in requiring compliance with such subpoena. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpoena issued by the Commission, issue an order requiring such person to appear and testify, to produce such books, records, papers, correspondence, and documents, and any failure to obey the order of the court shall be punished by the court as a contempt thereof.

(3) Appearances by the Commission under this Act shall be in its own name. The Commission shall be represented by attorneys designated by it.

(4) Section 6001(1) of title 18, United States Code, is amended by inserting immediately after "Securities and Exchange Commission," the following: "the Privacy Protection Commission."

(b) The Commission may delegate any of its functions to such officers and employees of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(c) In order to carry out the provisions of this Act, the Commission is authorized—

(1) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(2) to adopt, amend, and repeal interpretative rules for the implementation of the rights, standards, and safeguards provided under this Act;

(3) to enter into contracts or other arrangements or modifications thereof, with any government, any agency or department of the United States, or with any person,

firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(4) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

(5) to receive complaints of violations of this Act and regulations adopted pursuant thereto; and

(6) to take such other action as may be necessary to carry out the provisions of this Act.

COMMISSION STUDY OF OTHER GOVERNMENTAL AND PRIVATE ORGANIZATIONS

SEC. 106. (a) (1) The Commission shall make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information, and to determine the extent to which those standards and procedures achieve the purposes of this Act.

(2) The Commission periodically shall report its findings to the President and the Congress and shall complete the study required by this section not later than three years from the date this Act becomes effective.

(3) The Commission shall recommend to the President and the Congress the extent, if any, to which the requirements and principles of this Act should be applied to the information practices of those organizations by legislation, administrative action, or by voluntary adoption of such requirements and principles. In addition, it shall submit such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(b) (1) In the course of such study and in its reports, the Commission shall examine and analyze—

(A) interstate transfer of information about individuals which is being undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analyses of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2) The Commission shall include in its examination information activities in the following areas: medical, insurance, education, employment and personnel, credit, banking and financial institutions, credit bureaus, the commercial reporting industry, cable television and other telecommunications media, travel, hotel, and entertainment reservations, and electronic check processing. The Commission may study such other information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not

investigate information systems maintained by religious organizations.

(3) In conducting the study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) conduct a thorough examination of standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information;

(D) to the maximum extent practicable, collect and utilize findings, reports, and recommendations of major governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission; and

(E) receive and review complaints with respect to any matter under study by the Commission which may be submitted by any person.

REPORTS

SEC. 107. The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this Act.

TITLE II—STANDARDS AND MANAGEMENT SYSTEMS FOR HANDLING INFORMATION RELATING TO INDIVIDUALS

SAFEGUARD REQUIREMENTS FOR ADMINISTRATIVE, INTELLIGENCE, STATISTICAL-REPORTING, AND RESEARCH PURPOSES

SEC. 201. (a) Each Federal agency shall—

(1) collect, solicit, and maintain only such personal information as is relevant and necessary to accomplish a statutory purpose of the agency;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs; and

(3) inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what statutory authority it is solicited, what uses the agency will make of it, what penalties and specific consequences for the individual, which are known to the agency, will result from nondisclosure, and what rules of confidentiality will govern the information.

(b) Each Federal agency that maintains an information system or file shall, with respect to each such system or file—

(1) insure that personal information maintained in the system or file is accurate, complete, timely, and relevant to the purpose for which it is collected or maintained by the agency at the time any access is granted to the file, material is added to or taken from the file, or at any time it is used to make a determination affecting the subject of the file;

(2) refrain from disclosing any such personal information within the agency other than to officers or employees who have a need for such personal information in the performance of their duties for the agency;

(3) maintain a list of all categories of persons authorized to have regular access to personal information in the system or file;

(4) maintain an accurate accounting of the date, nature, and purpose of all other access granted to the system of file, and all other disclosures of personal information made to any person outside the agency, or to another agency, including the name and

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The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TUNNEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROTECTION OF THE RIGHT OF
PRIVACY

Mr. ERVIN. Mr. President, I move that the Chair lay before the Senate the message from the House of Representatives on H.R. 16373.

The motion was agreed to; and the Presiding Officer (Mr. STEVENSON) laid before the Senate H.R. 16373, an act to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, which was read twice by its title.

Mr. ERVIN. This is the House-passed bill on privacy. The Senate has passed its own bill. I move to strike out everything in H.R. 16373 after the enacting clause, and to substitute therefor the text of the Senate version of the privacy bill (S. 3418) as passed by the Senate yesterday.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 16373) was read the third time, and passed, as follows:

H.R. 16373

An act to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE I—PRIVACY PROTECTION
COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 101. (a) There is established as an independent agency of the executive branch of the Government the Privacy Protection Commission.

(b) (1) The Commission shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among members of the public at large who, by reason of their knowledge and expertise in any of the following areas: civil rights and liberties, law, social sciences, and computer technology, business, and State and local government, are well qualified for service on the Commission and who are not otherwise officers or employees of the United States. Not more than three of the members of the Commission shall be adherents of the same political party.

(2) One of the Commissioners shall be appointed Chairman by the President:

(3) A Commissioner appointed as Chairman shall serve as Chairman until the expiration of his term as a Commissioner of the Commission (except that he may continue to serve as Chairman for so long as he remains a Commissioner and his successor as Chairman has not taken office). An individual may be appointed as a Commissioner at the same time he is appointed Chairman.

(c) The Chairman shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present (but the Chairman may designate an Acting Chairman who may preside in the absence of the Chairman). Each member of the Commission including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress. Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(d) Each Commissioner shall be compensated at the rate provided for under section 5314 of title 5 of the United States Code, relating to level IV of the Executive Schedule.

(e) Commissioners shall serve for terms of three years. No Commissioner may serve more than two terms. Vacancies in the membership of the Commission shall be filled in the same manner in which the original appointment was made.

(f) Vacancies in the membership of the Commission, as long as there are three Commissioners in office, shall not impair the power of the Commission to execute the functions and powers of the Commission.

(g) The members of the Commission shall not engage in any other employment during their tenure as members of the Commission.

(h) (1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review to the submission of such recommendations, testimony, or comments to the Congress.

PERSONNEL OF THE COMMISSION

SEC. 102. (a) (1) The Commission shall appoint an Executive Director who shall perform such duties as the Commission may determine. Such appointment may be made without regard to the provisions of title 5, United States Code.

(2) The Executive Director shall be compensated at a rate not in excess of the maximum rate of GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(b) The Commission is authorized to appoint and fix the compensation of such officers and employees, and prescribe their functions and duties, as may be necessary to carry out the provisions of this Act.

(c) The Commission may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

FUNCTIONS OF THE COMMISSION

SEC. 103. (a) The Commission shall—

(1) publish annually a United States Directory of Information Systems containing the information specified to provide notice under section 201(c) (3) of this Act of each information system subject to the provisions of this Act and a listing of all statutes which require the collection of such information by a Federal agency;

(2) investigate, determine, and report any violation of any provision of this Act (or any regulation adopted pursuant thereto) to the President, the Attorney General, the Congress, and the General Services Administration where the duties of that agency are involved, and to the Comptroller General when it deems appropriate; and

(3) develop model guidelines for the implementation of this Act and assist Federal agencies in preparing regulations and meeting technical and administrative requirements of this Act.

(b) Upon receipt of any report required of a Federal agency describing (1) any proposed information system or data bank, or (2) any significant expansion of an existing information system or data bank, integration of files, programs for records linkage within or among agencies, or centralization of resources and facilities for data processing, the Commission shall—

(A) review such report to determine (i) the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the confidentiality of information relating to such individuals, and (ii) its effect on the preservation of the constitutional principles of federalism and separation of powers; and

(B) submit findings and make recommendations to the President, Congress, and the General Services Administration concerning the need for legislative authorization and administrative action relative to any such proposed activity in order to meet the purposes and requirements of this Act.

(c) After receipt of any report required under subsection (b), if the Commission determines and reports to the Congress that a proposal to establish or modify a data bank or information system does not comply with the standards established by or pursuant to this Act, the Federal agency submitting such report shall not proceed to establish or modify any such data bank or information system for a period of sixty days from the date of receipt of notice from the Commission that such data bank or system does not comply with such standards.

(d) In addition to its other functions the Commission shall—

(1) to the fullest extent practicable, consult with the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out the provisions of this Act and in conducting the study required by section 106 of this Act;

(2) perform or cause to be performed such research activities as may be necessary to implement title II of this Act, and to assist Federal agencies in complying with the requirements of such title;

(3) determine what specific categories of information should be prohibited by statute from collection by Federal agencies on the basis that the collection of such information would violate an individual's right of privacy; and

(4) prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local govern-